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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

# No. 1219

S. BUCHSBAUM & CO., ASKANIA REGULATOR CO., DIAMOND BRAIDING MILLS, INC., ET AL.,
*Appellants,*

*vs.*

ROBERT L. GORDON, DIRECTOR OF LABOR OF THE STATE OF ILLINOIS

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

## STATEMENT OPPOSING JURISDICTION

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

# No. 1219

S. BUCHSBAUM & CO., A CORPORATION; ASKANIA REGULATOR CO., A CORPORATION; DIAMOND BRAIDING MILLS, INC., A CORPORATION; DIAMOND WIRE & CABLE CO., A CORPORATION; JAMES G. HEGGIE MFG. CO., A CORPORATION; HOLLUP CORPORATION, A CORPORATION; INDEPENDENT PNEUMATIC TOOL CO., A CORPORATION; J. P. SEEBURG CORP., A CORPORATION; WESTERN FELT WORKS, A CORPORATION; E. M. WEYMER CO., A CORPORATION; A. M. STEELHAMMER, LILLIAN C. STEELHAMMER, ADAM GABRIEL AND ANNA F. GABRIEL, CO-PARTNERS DOING BUSINESS AS ACME INDUSTRIAL CO., AGAR PACKING & PROVISION CORP., A CORPORATION; AND THE VICTOR MANUFACTURING AND GASKET COMPANY, A CORPORATION, *Appellants*,

*vs.*

ROBERT L. GORDON, DIRECTOR OF LABOR OF THE STATE OF ILLINOIS, *Appellee*

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 28416

## STATEMENT OF APPELLEE AGAINST THE APPELLANTS' ASSERTED JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

Appellee presents this statement to disclose matters and grounds making against the jurisdiction of the Supreme Court of the United States.

## I. The Nature of the Case

The cases involved in this appeal originally presented two independent attacks, one under State law and one under the Federal Constitution, upon the validity of the measure enacted by the Illinois Legislature, commonly known as the "War Risk Amendments to the Illinois Unemployment Compensation Act."

Under the "experience rating" provisions of the Act (which will shortly be discussed) the contribution rates of certain employers were reduced, beginning with the year 1943. The effect of the war risk amendments was to suspend such reductions for a limited period of time (July 1, 1943 to December 31, 1945) with respect to those employers whose pay rolls had increased by more than one hundred per cent over the amount of their pay rolls for the calendar year 1940. However, since the first $100,000 of all pay rolls is exempt from the application of the war risk amendments, only those employers whose pay rolls exceed $100,000 are affected thereby.

It should be noted and emphasized (because the point is one of the utmost importance) that it is not only employers whose pay rolls are less than $100,000 that are entitled to the benefit of the exemption. *All* employers, regardless of how great their pay rolls may be, are entitled to the same exemption as to the first $100,000 of payroll. In other words, the exemption of $100,000 is similar in its operation to the familiar $500 exemption which is given to every individual in the United States under the present Income Tax law, whether such individual's total income is less than $500 so that he need pay no tax, or whether his income is in the highest brackets.

Appellants, although they themselves are entitled to the $100,000 exemption, nevertheless complain of this exemp-

tion as so unreasonable as to vitiate the measure in question.

The first of the two above-mentioned independent attacks on the war risk amendments raised only a question of Illinois state constitutional law, for it was predicated upon appellants' contention that another amendment to the Act, enacted on the same day that the measure in question was enacted, had the effect, under Illinois law, of repealing the measure in question. The Supreme Court of Illinois has decided this question adversely to appellants. It is, of course, not suggested by appellants that this question is subject to review in this Court and we allude to it only in order to explain the opinion of the Supreme Court of Illinois.

By the second attack on the measure, appellants contended that it is unreasonable and that it denies them equal protection, particularly and principally because the Legislature saw fit to grant a $100,000 exemption to all employers, including appellants.

In short, then, appellants are in the posture of contending that, although they appear to concede that a legislature may take cognizance of the threat of widespread unemployment implied in the abnormal expansion of pay rolls during a war and may suspend the reduction of rates of contributions with respect to employers whose pay rolls undergo such expansion, nevertheless an exemption of the first $100,000 of all pay rolls renders the amendment void even though appellants share the benefit of such exemption.

The objective of the Illinois Unemployment Compensation Act as is manifest from its Declaration of Public Policy (Ch. 48, Par. 217, p. 1629, Ill. Rev. Stat. 1943) is to counteract the evils flowing from widespread unemployment. The legislation is designed primarily as a plan to prevent and alleviate the disastrous effects of unemployment by providing benefits to unemployed workers to buffer

the loss of income during periods of unemployment. The plan sets up a trust fund, from which such benefits are paid. To protect this fund against insolvency, and to strengthen it so as to guarantee adequate benefits when the challenge of unemployment arises in the post-war period, is of paramount importance to the people of the State of Illinois.

The grave need which prompted the enactment of the Illinois Unemployment Compensation Act likewise prompted the passage of similar laws throughout the land. Every State now has an unemployment compensation law. The present unemployment compensation program is essentially a system of National-State cooperation, under which the States have wide discretion as to the substance and administration of their respective laws. *Steward Machinery Company* v. *Davis,* 301 U. S. 548, 587-588; *Carmichael* v. *Southern Coal & Coke Company,* 301 U. S. 495, 526.

As the system now stands, unemployment compensation is primarily a State function, with each State legislating and administering its own law in accordance with its own policies and conditions. Correspondingly, the responsibility for safeguarding and improving the unemployment compensation program rests squarely on each State.

When the war ends the Illinois unemployment trust fund, as well as the funds of other States, will be put to a severe test as to the adequacy of their reserves and the benefit protection they will afford. These funds will play a major role during the period of post-war readjustment. They will serve as the first line of defense for the millions of workers now employed in war industries, who will be laid off and unemployed during industry's reconversion and readjustment to peacetime production.

It is anticipated "that if the war ends suddenly we might have fifteen to twenty million people looking for jobs one or two years after the war. Of this number * * * any-

where from seven to twelve million may come from the declining war industries in the transition to peace production." Report of interviews with important government and private agencies upon post-war problems and plans to the Special Committee on Post-War Economic Policy and Plan, pursuant to Sen. Res. 102, Doc. No. 106, 78th Cong. 1st Sess. (Brief and Argument for Appellee, pp. 61-62).

A significant analysis of the impact upon unemployment compensation programs which will follow as the result of demobilization of war workers is to be found on pages 62 to 64 of the Brief and Argument for Appellee.

The danger to the solvency of unemployment compensation funds in the post-war period has been stressed by the Interstate Committee on Post-War Reconstruction and Development, Council of State Governments, of which the Governors of ten States are members. In its report of May, 1944 (Brief and Argument for Appellee, pp. 64-67), the said Committee concluded:

> "In nearly every State, the solvency problem now looms large, primarily because of the wartime expansion of its larger employers • • • Charging expanded employers higher wartime contribution rates, more clearly covering their increased unemployment risks, provides a practical and equitable answer—for State-by-State action—to the problem of rapid and unevenly distributed wartime expansion in covered workers, pay rolls, and potential post-war liabilities. No other suggested solution of this problem would be equally fair, practical and effective."

The 36th Annual Governors' Conference, which met in May, 1944, adopted the following resolution (Brief and Argument for Appellee, pp. 67-68):

> "• • • In order to be able to meet all post-war problems through the use of State unemployment com-

pensation systems as now constituted, the States should consider action along the following lines:—

"(1) Each State should make careful estimates of its probable post-war unemployment benefit payments, and of the solvency prospects of its unemployment fund;

"(2) Any State whose fund is in danger of post-war insolvency should take prompt steps to build more adequate reserves, through legislation, requiring higher war-time contribution rates;"

The Illinois Legislature did not improvise a judgment when it found that the war risk amendments were essential to protect the solvency of the Illinois unemployment trust fund. The said amendments were enacted only after a thorough study had been made of the conditions which the legislation was intended to remedy. A brief history of the legislation demonstrates how carefully the problem was investigated.

Prior to January 1, 1943 all employers who were subject to the Illinois Unemployment Compensation Act were required to pay contributions at the same uniform rate, namely, 2.7 per cent (1.8 per cent for 1937).

Appellants, without justification, have referred to such uniform rate prior to 1943 as an arbitrary statutory rate (Appellants' Jurisdictional Statement, p. 8). This Court has, however, held in *Carmichael* v. *Southern Coal & Coke Company, supra,* pp. 506, 524-525, that such a uniform rate in the Alabama Unemployment Compensation Act was not arbitrary or unreasonable.

From its very beginning, July 1, 1937, the Illinois Unemployment Compensation Act provided that after a specified period of time variable rates would be established on the basis of employers' experience with the risk of unemployment. In accordance with the provisions of the law, such experience rating went into effect on January 1, 1943, and

variable rates ranging from 0.5 per cent to 3.6 per cent were issued to those employers who had incurred liability for the payment of contributions in each of the first four out of the last five preceding calendar years. The variable rate that each such employer received was measured partly in terms of his experience with the risk of unemployment in the preceding three-year period, and partly in terms of the experience of the State as a whole during the same period of time.

The Legislature, however, recognized the need of a study of the provisions of the Act dealing with experience rating, so as to determine whether a modification of such rates was required. It, therefore, enacted the following provisions (Section 18(d) of the Illinois Unemployment Compensation Act, Ch. 48, Par. 234, p. 1626, Ill. Rev. Stats. 1941):

> "Study of Experience Rating. The Board of Unemployment Compensation and Free Employment Office Advisors created by Section 6 of 'The Civil Administrative Code of Illinois,' approved March 7, 1917, as amended, is hereby authorized and directed to study and examine the present provisions of this Act providing for experience rating, in order to determine whether the rates of contributions for the calendar years 1943 and thereafter will operate to replenish the amount of benefits paid and to determine the effect of experience rating upon labor and industry in this State.
>
> "The Board shall submit its finding and recommendations based thereon to the sixty-third General Assembly, including, if it is found that the rates for 1943 and thereafter will not provide for replenishment of benefits paid out, a recommendation of such adjustment of rates as will accomplish this purpose. The Board may employ such experts and assistants as may be necessary to carry out the provisions of this subsection. All expenses incurred in the making of this study, including the preparation and submission of its findings and recommendations, shall be paid in the

same manner as is provided for the payment of costs of administration of this Act."

The said Board, created by statute in the Department of Labor, is composed of nine persons appointed by the Governor. Three of its members are chosen from the employee class, three from the employing class, and three are not identified either with the employing or employee classes. The powers and duties of the said Board are to consider and study the field of unemployment compensation and to give advice and make recommendations to the Governor and to the General Assembly when so requested or upon its own initiative (Ch. 127, Paragraphs 6, 7, 8 and 12, pp. 3027-3030, Ill. Rev. Stats. 1941).

Pursuant to the foregoing provisions of the law, the said Board on April 27, 1943, after a careful study of the problem, submitted reports to the Governor and to the Sixty-Third General Assembly recommending the adoption of the war risk amendments, which it proposed to Section 18 of the Act. The Board, in recommending the adoption of such war risk amendments, presented cogent and imperative reasons in support thereof and stressed the immediate necessity of modifying, for a limited period of time (July 1, 1943 to December 31, 1945), the reduced rates of those employers who had experienced an unprecedented expansion of employment and pay roll as a result of the war production effort. It emphasized the potential threat that such expanded pay rolls represented to the unemployment trust fund in the post-war period, when such pay rolls would shrink and countless numbers of unemployed workers would draw unemployment compensation benefits. It pointed out that in fairness to Illinois employers who were engaged in civilian production, and whose pay rolls had remained at a relatively static level, the proposed amendment would more justly apportion the cost of unemployment in the post-war

period (Add'l Abst. pp. 32-39). Hearings on the war risk amendments were subsequently held by a Senate committee of the Illinois Legislature (Add'l Abst. pp. 13-19). Patently, a wealth of evidence supports the policy which finds expression in the Act.

The necessity for the war risk amendments has been recognized not only in Illinois but also in many other parts of the country. Nine other States have added war risk amendments to their unemployment compensation laws (Alabama, Florida, Iowa, Maryland, Minnesota, Missouri, Ohio, Oklahoma and Wisconsin). The constitutionality of the war risk amendments in Minnesota has been sustained by the Supreme Court of that State. *State* v. *Donovan*, 16 N. W. (2d) 896 (Decided December 15, 1944.)

## II. The Appeal Should Be Dismissed Since No Substantial Federal Question Is Involved

The principles underlying the classifications established by the war risk amendments have been repeatedly upheld in a long line of decisions of this Court. These decisions, which will shortly be discussed, foreclose the questions raised by appellants so as to leave no room for real controversy.

The basic classifications established by the war risk amendments are as follows:

1. Employers whose pay rolls in the preceding calendar year are not in excess of 100 per cent of their 1940 pay rolls.

2. Employers whose pay rolls in the preceding calendar year are in excess of 100 per cent but less than 150 per cent of their 1940 pay rolls, and whose reduced rates of contributions in the current calendar year are less than 2 per cent.

3. Employers whose pay rolls in the preceding calendar year are in excess of 150 per cent of their 1940 pay rolls, and whose reduced rates of contributions in the current calendar year are less than 2.7 per cent.

Employers in the first classification are not subject to a war risk rate. Those in the second classification are subject to a war risk rate of 2 per cent on that portion of their current pay rolls in excess of $100,000. Employers in the third classification are subject to a war risk rate of 2.7 per cent on that portion of their current pay rolls in excess of $100,000.

The plain purpose of the classifications is to graduate the rates of those employers whose rates of contributions have been reduced at a time when their abnormal expansion of pay rolls and employment rolls due to the war is rolling up a tremendous potential liability against the Illinois unemployment trust fund. The right of the Legislature to graduate rates as long as there is a reasonable basis for the distinction has been repeatedly sustained by this Court. *Fox* v. *Standard Oil Co.*, 294 U. S. 87, 100; *Magoun* v. *Illinois Trust and Savings Bank*, 170 U. S. 283, 299, 300; *Tax Commissioners* v. *Jackson*, 283 U. S. 527, 536, 537; *Atlantic & Pacific Tea Co.* v. *Grosjean*, 301 U. S. 412, 419; *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1, 21, 25; *Clark* v. *Titusville*, 184 U. S. 329, 331; *Chesapeake & Ohio Ry.* v. *Conley*, 230 U. S. 513, 522.

Clearly, it was reasonable for the Legislature to exclude from the scope of the war risk amendments employers in the first classification whose pay rolls in the preceding calendar year did not exceed their 1940 pay rolls by more than 100 per cent. The inclusion of such employers would mean, in many instances, the inclusion of those whose pay rolls had expanded not as the result of an increase in workers but solely because of overtime or wage increases. To

the extent that such a classification is likely to exclude pay rolls expanded solely for such purposes, it is far more reasonable than a method under which all expansion in pay roll would be included.

With respect to the graduation of rates between the other two classifications, it was not unreasonable for the Legislature to make some allocation of responsibility on the theory that the greater the abnormal expansion of pay rolls and employment rolls in the war period the greater the abnormal contraction of pay rolls and employment rolls in the post-war period.

It is contended by appellants that the amendments make no distinction between varying degrees of expansion in excess of 150 per cent of 1940 pay rolls. This merely amounts to an argument that the war risk rates must be meticulously varied in accordance with the degree of expansion in order to be valid. It is manifest that while the Legislature may make some distinction as to different degrees of expansion, it is not required to be meticulous and scientific and to make a refined number of such distinctions. *Great Atlantic & Pacific Tea Co.* v. *Grosjean, supra,* p. 424; *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U. S. 61, 78.

The war risk amendments are challenged by appellants on the ground that they exempt employers whose pay rolls do not exceed $100,000 a year. It is clear from a reading of the amendments that the exemption applies not to employers with pay rolls of less than $100,000, but to the pay rolls of all employers subject to war risk rates up to $100,000. The exemption which appellants contend applies to employers with pay rolls of less than $100,000 is an exemption which applies equally to appellants as well as to all other employers who are subject to the war risk provisions. Even if it is assumed that the purpose of the limitation was to exempt employers whose pay rolls did not ex-

ceed $100,000 per year, there is clearly no discrimination against appellants or other employers subject to the war risk amendments, since they are exempted to the same extent as are the employers whose pay rolls do not exceed $100,000 a year.

Nothing is more familiar in graduated income tax laws than the foregoing type of exemption. Such income tax laws are clearly not unconstitutional because they uniformly exempt from taxation a portion of income which is below a specified amount. *Brushaber* v. *Union Pac. R. R., supra,* pp. 1, 21, 25.

Even if the purpose of the $100,000 limitation was to exempt small employers, the reasons for such exemption readily suggest themselves. Classifications based on numerical bases have often been sustained by this Court. The Supreme Court of Illinois in the instant case quoted with approval the following classic passage from this Court's decision in *Carmichael* v. *Southern Coal and Coke Company, supra,* pp. 510 and 511:

> "Distinctions in degree, stated in terms of differences in number, have often been the target of attack, see *Booth v. Indiana,* 237 U. S. 391, 397. It is argued here, and it was ruled by the court below, that there can be no reason for a distinction, for purposes of taxation, between those who have only seven employees and those who have eight. Yet, this is the type of distinction which the law is often called upon to make.[1] It is only a difference in numbers which marks the moment when day ends and night begins, when the disabilities of in-

[1] *St. Louis Consol. Coal Co.* v. *Illinois,* 185 U. S. 203, 207 (coal mines employing five or more subject to inspection); *McLean* v. *Arkansas,* 211 U. S. 539, 551 (mines employing ten or more required to measure coal for payment of wages before screening); *Booth* v. *Indiana,* 237 U. S. 391, 397 (mines required to supply washhouses upon demand of twenty employees); *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571, 576; *Middleton* v. *Texas Power & L. Co.,* 249 U. S. 152, 159 (employers of five or more included within workmen's compensation act).

> fancy terminate and the status of legal competency is assumed. It separates large incomes which are taxed from the smaller ones which are exempt, as it marks here the difference between the proprietors of larger businesses who are taxed and the proprietors of smaller businesses who are not."

On page 13 of their Jurisdictional Statement, as a result of a misconstruction of the word "alone," appellants imply that this Court in *Carmichael* v. *Southern Coal and Coke Co., supra,* held that the distinction between proprietors of small and large businesses can only be justified by administrative convenience and expense. Obviously, this is incorrect as is evident not only from a proper construction of the word "alone," but also from a reading of subsequent portions of the opinion. On page 511 of its decision in the *Carmichael* case, *supra,* this Court declared:

> "It would hardly be contended that the state in order to tax payrolls, is bound to assume the administrative cost and burden of taxing all employers having a single employee. But if for that *or any other reason* it may exempt some, whether it should draw the line at one, three, or seven, is peculiarly a question for legislative decision." (Emphasis ours.)

Again on pages 520 and 521, it stated:

> "Special complaint is made of the discrimination against those with only six co-workers, as contrasted with those who have more. We have already shown that a distinction in terms of the number of employees is not on its face invalid. *Here the legislative choice finds support in a conclusion reached by students of the problem, that unemployment is less likely to occur in businesses having a small number of employees.*" (Emphasis ours.)

Appellants attempt to distinguish the *Carmichael* case, *supra,* on the ground that the Alabama Unemployment

Compensation Act is a revenue measure, while the Illinois Unemployment Compensation Act is an exercise of the police power. Whether it is one or the other is unimportant. "* * * The particular name which a state court or legislature may give to a money payment commanded by its statute is not controlling here when its constitutionality is in question." (*Carmichael* case, *supra*, p. 508.)

In the foregoing case on pages 512 and 513 of its opinion, this Court, in passing upon an attack made against other exemptions in the Alabama Unemployment Compensation Act, also stated:

> "Where the public interest is served, one business may be left untaxed and another taxed, in order to promote the one. * * * This court has often sustained the * * * exemption for the encouragement of agriculture. * * * Similarly, the Legislature is free to aid a depressed industry such as shipping. The exemption of a business operating for less than twenty weeks in a year may rest upon similar reasons, or upon the desire to encourage seasonal or unstable industries."

Ever since the first anti-trust law was passed in this country, legislative bodies have followed a policy of fostering small business. In the present war period, there has been even more concern over the plight of small business. The report of the Special Committee to Study and Survey Problems of American Small Business (Senate Report No. 12, 78th Cong. 1st Sess., pp. 1-2) declared:

> "* * * our program of total war has intervened to grealty magnify the problem of saving small business. The basis of free competitive enterprise has been practically suspended by the exigencies of war. The trend toward the expansion of big concerns and the wiping out of smaller ones has been renewed with greater impetus than ever before. Small business concerns are daily closing their doors all over the country" (Brief and Argument for Appellee, p. 82).

In view of this, is it unreasonable for the Legislature to have thought it desirable to relieve smaller businesses from the application of war risk rates?

It is also generally recognized that small concerns have not done as well as large concerns in the war.

> "The war that we are now waging has conjured up a grim paradox; the existence of idle factories and idle machines at a time when the survival of this country and of the United Nations depends largely upon speedier manufacture of planes, tanks, ships, guns, and other weapons of war.
>
> "For the most part these idle factories and these idle machines are owned by smaller independent business men who have been unable to obtain enough war contracts from procurement agencies—from the War Department, Navy Department, Lend-Lease Administration, Maritime Commission and others. * * * Sub-contracting to smaller firms has proceeded at a snail's pace." Senate Report No. 12, supra, p. 3 (Brief and Argument for Appellee, p. 83).

This describes the situation only with respect to those small establishments which might be used directly in the production of war and other essential products. In the case of small establishments which cannot be used directly for such purposes, it is likely that expansion is not due to the war and is not of such a nature as to cause or be affected by dislocations after the end of the war.

Throughout appellants' arguments runs the misconception that there must be a necessary relationship between the $100,000 exemption and 1940 pay rolls and that the want of such a relationship renders the war risk amendments invalid. The use of 1940 pay rolls as a gauge in measuring abnormal pay roll expansion due to the war clearly does not warrant appellants' conclusion that the employers subject to the war risk amendments are therefore entitled to re-

duced rates on that portion of their current pay roll which is equivalent to their 1940 pay roll.

Appellants' argument that the war risk amendments are unconstitutional in that they do not give employers subject thereto the benefit of their reduced rates on that portion of their current pay rolls which is equivalent to their 1940 pay roll is devoid of merit, in view of the terrific impact that the unemployment trust fund will suffer in the post-war period as the result of unemployment due to such employers. It ignores the fact that the workers of employers subject to war risk rates are acquiring benefit rights which are tremendously greater than the contributions which are being paid by these employers on their wages. It is obvious that even with the additional contributions called for under the war risk amendments, only a small fraction of the total cost of unemployment attributable to such war risk employers will be paid as a result of such contributions. (Opinion of the Supreme Court of Illinois in the instant case, pp. 41, 42 of the appendix to appellants' Jurisdictional Statement; Add'l Abst. pp. 34, 35.)

Manifestly, the Legislature could have, with considerable justification, imposed the war risk rate on the entire pay roll of employers subject to the amendments and need not have extended the benefit of the exemption to any portion of the pay roll of such employers. Had it done so, there would have been no grounds for any of appellants' arguments as to alleged inequalities of employers subject to war risk rates. But the mere fact that the Legislature uniformly exempted pay rolls up to $100,000 of all employers, including those affected by war risk rates, plainly furnishes no basis for the contention that the exemption is unreasonable in that it is not related to 1940 pay rolls.

Appellants imply that many employers subject to the war risk amendments had pay rolls of less than $100,000 in 1940. They therefore conclude that as a result of the $100,000 ex-

emption such employers receive the benefit of a reduced rate of contributions on a portion of their current pay roll which is in excess of their 1940 pay roll, while other employers affected by war risk rates, whose pay rolls in 1940 were more than $100,000, receive the benefit of a reduced rate on a portion of their current pay rolls which is less than their 1940 pay roll (Jurisdictional Statement, pp. 10, 11, 17, 18).

While the argument is immaterial as there is no necessary relationship between the $100,000 exemption and 1940 pay rolls, it should be noted that appellants' premise that many employers affected by war risk rates had a pay roll of less than $100,000 in 1940 is based upon a hypothetical example, which they have erroneously termed as "typical," and upon a few extreme cases taken from a list of "selected expanded employers." That appellants' premise is incorrect is demonstrated by the record, which shows that the average 1940 pay roll of employers affected by war risk rates in 1943 was $313,133 (Abst. p. 103; Add'l Abst. p. 40), and that the average 1940 pay roll of employers affected by war risk rates in 1944 was $292,089 (Abst. p. 104; Add'l Abst. p. 41).

Appellants further contend that by giving employers subject to war risk rates the same exemption, employers with larger pay rolls in 1944 paid a war risk rate on a higher percentage of their entire pay rolls. The same pervasive misconception that the exemption must be related to 1940 pay rolls is again in evidence but in a slightly different form. In view of what has been said, the fallacy of appellants' reasoning is apparent. Their argument is also virtually tantamount to saying that between employers who are subject to the same war risk rates the employer with the largest pay roll pays the most contributions.

The exemption being valid, appellants' arguments as to alleged inequalities between the employers subject to war

risk rates clearly falls. *Magoun* v. *Illinois Trust and Savings Bank*, supra, pp. 296, 299, 300.

On page 17 of their Jurisdictional Statement, appellants point to the war risk amendments enacted in Iowa and Oklahoma in support of their proposition that employers subject to the war risk amendments should receive reduced rates on that portion of their current pay roll equivalent to their 1940 pay roll. Appellants, however, fail to note that Iowa's war risk rates range from 2.7 per cent to 5.0 per cent,[2] which are considerably higher than the war risk rates of 2 per cent and 2.7 per cent in Illinois. Nor do they indicate that three states (Maryland, Ohio and Wisconsin) have enacted war risk amendments which impose war risk rates on the entire pay rolls of employers who are subject thereto,[3] and that four other states besides Illinois (Alabama, Iowa, Minnesota and Wisconsin) have exempted smaller employers by designating only pay rolls in excess of a stated amount as being subject to war risk rates.[4]

Most of appellants' arguments, when boiled down, amount to nothing more than conclusions that they could have drawn a better statute or distributed the burden more wisely. Such arguments are not relevant to the issue of constitutionality. They are functions reserved for the Legislature. *Carmichael* v. *Southern Coal and Coke Company, supra*, p. 525; *International Harvester Company* v. *Missouri*, 234 U. S. 199, 215.

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[2] Section 1551.13, Iowa Code, 1939, as amended by Session Laws 1943, Ch. 71, adding C-7.

[3] Section 7, Art. 95 A, Annotated Code of Maryland (1939) amended by Session Laws 1943, adding subsection 7(c)(3); Section 1345-4(c)(4)(D), Ohio Code Supplement 1940-1945; Section 108.18(7) Wisconsin Statutes 1943.

[4] Title 26, Sec. 204(G) Code of Alabama 1940, as amended by Session Laws 1943, p. 286; Ch. 23 AA Sec. 4337-24, Mason's Minnesota Statutes Supplement, as amended by Session Laws 1943, Ch. 650, Sec. 2; also see *supra*, footnotes 1 and 2 for references to Iowa and Wisconsin statutes.

This Court has frequently held that the Legislature is not bound to occupy the whole field, but that it may strike at the evil where it is most felt. *Carmichael* v. *Southern Coal and Coke Company*, supra, pp. 519 and 520 and cases cited therein; also *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400.

The war risk amendments provide an excellent illustration of that principle. The concentration of abnormal expansion in pay rolls and in employment rolls has taken place within the very group affected by the war risk amendments. For example, the pay roll subject to contributions in 1942 of the employers affected by war risk rates in 1943 was increased by 212.6 per cent over their pay roll subject to contributions in 1940. The pay roll subject to contributions in 1943 of these same employers was increased by 316.4 per cent over their pay roll subject to contributions in 1940! (Add'l Abst. p. 40; Brief and Argument for Appellee, p. 73).

In contrast with this, the pay roll subject to contributions in 1942 of all other employers subject to the Illinois Unemployment Compensation Act, who were not affected by war risk rates in 1943 was increased by only 32.8 per cent over their pay roll subject to contributions in 1940, and their pay roll subject to contributions in 1943 was increased by only 48.4 per cent over their pay roll subject to contributions in 1940 (Add'l Abst. p. 40; Brief and Argument for Appellee, p. 73).

Equally significant results likewise appear in a comparison of the abnormal growth of the *employment rolls* of employers subject to war risk rates with the very slight increase, if any, of the *employment rolls* of all other employers in the State subject to the Illinois Unemployment Compensation Act, but not affected by war risk rates.

Employers who were subject to war risk rates in 1943 had an increase of 128.2 per cent in the number of their workers

from 1940 to 1942, and an increase of 180.7 per cent from 1940 to 1943! (Add'l Abst. p. 42; Brief and Argument for Appellee, p. 74).

In contrast with this, employers who were subject to the Illinois Unemployment Compensation Act but not affected by war risk rates in 1943, had an increase of only 8.3 per cent in the number of their workers from 1940 to 1942 and an increase of only 5.9 per cent from 1940 to 1943! The number of their workers *decreased* from 1942 to 1943 (Add'l Abst. p. 42; Brief and Argument for Appellee, p. 74).

These figures speak for themselves. They indicate how clearly the Legislature struck at the evil by including within the scope of the war risk amendments essentially those employers whose abnormal growth of employment rolls due to the war presaged abnormal contraction of employment rolls and the piling up of a tremendous liability against the unemployment trust fund in the post-war period.

It is respectfully submitted that the questions raised by appellants have been so explicitly decided by this Court as to foreclose further argument on the subject and hence to cause the federal question relied upon to be devoid of any substantial foundation or merit.

## Conclusion

For the reasons herein stated it is submitted that an appeal does not lie from the decision of the Supreme Court of Illinois to this Court.

Respectfully submitted,

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